



Minimize *effort* ...Maximize *e-rate*

CIPA and Internet Policies

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CIPA: Background

- ▶ Follow-up to Communications Decency Act (CDA, 1996)
- ▶ December 2000: Passed Congress
- ▶ Sept. 2001: Lawsuit filed by ALA, ACLU, et al.
- ▶ May 2002: Found unconstitutional by District Court
- ▶ June 2003: Found constitutional by SCOTUS
- ▶ July 2003: FCC releases library CIPA regulations

CIPA Compliance: E-rate And LSTA

Program	Must Comply with CIPA Requirements	CIPA Requirements Do Not Apply
E-rate	When getting discounts for <ul style="list-style-type: none">• Internal connections• Internet access	When getting discounts for <ul style="list-style-type: none">• Telecommunication services
LSTA	When using funds for <ul style="list-style-type: none">• PCs with Internet access• Internet access	When using funds for <ul style="list-style-type: none">• Any other purposes allowed by LSTA and state guidelines

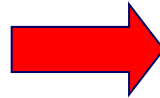
When using both LSTA and E-rate for services requiring compliance, CIPA's E-rate language takes precedence.

What The TPM* Must Do

CIPA law:

A library must enforce an Internet safety policy that includes operation of a TPM on ***any of its*** computers with Internet access. The TPM must ***protect*** against ***visual depictions*** that are—

- 1) Obscene
- 2) Contain child pornography
- 3) Are harmful to minors



FCC regulations:

We have crafted our rules to provide libraries with maximum flexibility. We conclude that local authorities can best choose the technology measures and Internet safety policies most appropriate for their communities.

* TPM = Technology Protection Measures (i.e., filters) . The term “Technology Protection Measure” is used throughout CIPA.

What The TPM Must Do (cont.)

- ▶ The TMP must be on *all library* PCs with Internet access
 - Includes staff PCs
 - Does not include patron PCs
- ▶ The TPM must *protect* against illegal *images*
- ▶ The type of TPM and its configuration is a local decision
- ▶ Products claiming “CIPA compliance” are of little value

There is *no* TPM:

- 1) Certification process**
- 2) Compliance process**
- 3) Measure of effectiveness**

Defining “protection” is a local decision.

What Is Not In The Law Or FCC Regulations

(but could have been)

- ▶ No TMP specifications or compliance standards
- ▶ No requirement to:
 - Publicly post CIPA requirements
 - Publicly post the process to file a complaint
 - Publically post the process to request unfiltered access
 - Track patron attempts to access illegal images
 - Track when the TPM fails

Tracking patrons: “This is blatantly intrusive and well beyond the scope of the CIPA.” —WI State Library comments to FCC (Feb. 2001)

Defining Illegal Images

- ▶ Obscenity and child pornography defined in federal and state statutes
 - “Harmful to minors” defined in CIPA
- ▶ But legally, defining obscenity is difficult
 - Determined by Miller v. California decision (1973)
 - Appeals to prurient interest, lacks serious literary, artistic, or scientific value
 - Much “adult” content is not legally obscene
 - Legally it is a judicial, not a library decision
 - ...But a library’s Internet policy must be enforced
- ▶ Libraries may filter minors’ PCs at a more restrictive level

SCOTUS decision:

The government has a substantial interest in protecting young patrons from inappropriate material.

Disabling The TPM

- ▶ CIPA's phrase "lawful purpose" allows access to a wide variety of content
- ▶ Staff can disable the TPM
 - For themselves or patrons
 - For any lawful purpose
 - LSTA: Anyone can ask
 - E-rate: Adults can ask
- ▶ Court: Disabling is critical

FCC: Federal rules directing library staff when to disable the TPM would likely be overbroad and imprecise. We leave such determinations to local communities.

SCOTUS: If "over-blocking" presents constitutional concerns, such concerns are dispelled by the ease with which patrons may have the filter disabled. Libraries that refuse to unblock constitutionally protected Internet content may be subject to an as-applied challenge.

When The TPM “Fails”

- ▶ Who or what determines “failure”?
- ▶ CIPA has no private right of action
 - But “as applied” challenges are possible
- ▶ E-rate penalties
 - FCC can recover funds for noncompliance
- ▶ LSTA penalties
 - IMLS can withhold future funds but cannot recover funds for noncompliance
- ▶ Public relation issues likely more critical than penalties
 - Your library *must have a policy to address any complaints*

Overview of Internet Use Policies

- ▶ Place your Internet Use Policy (IUP*) in the context of other library policies
- ▶ Staff and board need to review IUP on regular basis
 - Helpful to have the policy reviewed by an attorney too
- ▶ The IUP should address both staff and patron use
- ▶ The IUP should be readily accessible on the library's website
 - Have notices near Internet PCs that state basics of the policy
- ▶ All staff must know steps to take to address patron complaints

* Sometimes called an “Acceptable Use Policy”



IUPs: Technology Issues

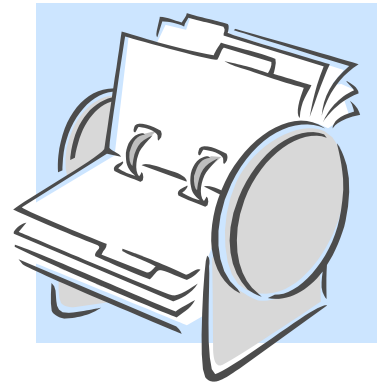
- ▶ Insufficient number of PCs
 - Enforcing time limitations
- ▶ Impact of limited bandwidth
- ▶ Download and print issues
- ▶ Making changes to PC settings
 - Trying to subvert security settings
- ▶ How much tech support can the library provide?
 - Address patron wireless access

IUPs: Content Issues

- ▶ What types of content are prohibited?
 - What is filtered, how can filter be disabled, etc.
- ▶ Technical reasons to restrict content or sites?
- ▶ Not all information is accurate, unbiased or current
 - Library is not responsible; patrons must exercise critical judgment
- ▶ Can patron's conduct their business via the library's Internet access?
- ▶ How is patron privacy of Internet use protected?
 - Is Internet use protected by AZ state statutes?



Questions?



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Thank You!

